

Filed for intro on 01/31/2002  
HOUSE BILL 2995 By  
Brown

SENATE BILL 3051  
By Crutchfield

AN ACT to amend Tennessee Code Annotated, Title 67, Chapter 4,  
relative to taxation of the privilege of engaging in various  
occupations, vocations, businesses and professions.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 67-4-1701, is amended by  
designating the existing language as subsection (a) and by adding the following new,  
appropriately designated subsection:

(b) The tax levied by this part shall be known as the "Occupational Privilege  
Tax."

SECTION 2. Tennessee Code Annotated, Section 67-4-1702, is amended by deleting  
that section in its entirety and by substituting instead the following language:

67-4-1702.

(a) A tax is hereby levied on the privilege of engaging in the following vocations,  
professions, businesses, and occupations:

- (1) Lobbyists, as registered pursuant to § 3-6-104;
- (2) Accountants, as licensed pursuant to title 62, chapter 1;
- (3) Architects, as registered pursuant to title 62, chapter 2;

(4) Principal brokers, acting pursuant to § 62-13-309, who are licensed pursuant to title 62, chapter 13 and defined in § 62-13-102(2);

(5) Engineers, as registered pursuant to title 62, chapter 2;

(6) Landscape architects, as registered pursuant to title 62, chapter 2;

(7) Audiologists, as licensed pursuant to title 63, chapter 17;

(8) Chiropractors, as licensed pursuant to title 63, chapter 4;

(9) Dentists, as licensed pursuant to title 63, chapter 5;

(10) Optometrists, as registered pursuant to title 63, chapter 8;

(11) Osteopathic physicians, as licensed pursuant to title 63, chapter 9;

(12) Pharmacists, as licensed pursuant to title 63, chapter 10;

(13) Physicians, as licensed pursuant to title 63, chapter 6;

(14) Podiatrists, as licensed pursuant to title 63, chapter 3;

(15) Psychologists, as licensed pursuant to title 63, chapter 11;

(16) Speech language pathologists, as licensed pursuant to title 63, chapter 17;

(17) Veterinarians, as licensed pursuant to title 63, chapter 12;

(18) Attorneys, as licensed by the Supreme Court of Tennessee;

(19) Athlete agents, as registered pursuant to title 49, chapter 7, part 21;

and

(20) Members of professional athletic teams, including active players, players on the disabled list, and any other persons who are required to travel with or perform services for the team on a regular basis, including coaches, managers, trainers, and equipment managers.

(b) The tax levied by this section does not apply to any full-time employee of the United States Government, the State of Tennessee, or any municipal or county government in Tennessee. As used in this subsection, "municipal or county

government” includes quasi-governmental entities such as development districts, utility districts, school districts, and other agencies performing governmental or proprietary functions on behalf of municipalities and counties, and associations composed of such quasi-governmental entities.

SECTION 3. Tennessee Code Annotated, Section 67-4-1703, is amended by deleting that section in its entirety and by substituting instead the following language:

(a) Each individual who exercises the privilege of engaging in Tennessee in any vocation, profession, business, or occupation listed in Section 67-4-1702(a) shall annually pay a tax measured by and equal to one percent (1%) of annual net earnings resulting from engaging in such privilege in Tennessee; provided, that only the first thirty thousand dollars (\$30,000) of such earnings during the tax year shall be subject to the tax. In no event shall the tax exceed three hundred dollars (\$300) in any tax year for any taxpayer, even if such taxpayer is engaged in two or more vocations, professions, businesses, or occupations listed in Section 67-4-1702(a).

(b) “Annual net earnings” by which this tax is measured shall be the sum of:

(1) Wages, salaries, commissions, and any other compensation received as an employee engaged in any vocation, profession, business, or occupation listed in Section 67-4-1702(a), but only to the extent that such compensation was for services performed and privileges exercised in Tennessee; and

(2) The individual’s share of net profit, but not less than zero (0), of any entity, including but not limited to a sole proprietorship, partnership, limited liability company, or corporation, engaged in any vocation, profession, business, or occupation subject to this tax, but only to the extent the entity’s net profit is derived from the exercise in Tennessee of a privilege subject to this tax; provided, that if the individual’s participation in the entity is limited to the

investment of money, such share of net profit is not subject to the tax levied by this part.

(c) If a taxpayer performs services both inside and outside Tennessee, then for purposes of subdivision (b)(1), annual net earnings shall be determined by multiplying the individual's total compensation for the tax year by a fraction, the numerator of which is the number of days spent working in Tennessee and the denominator of which is the total working days both inside and outside Tennessee. The total working days does not include days on which the employee was not required to work, such as holidays, sick days, vacation days, and paid or unpaid leave.

(d)

(1) Earnings shall be deemed to derive from the exercise of a privilege listed in Section 67-4-1702(a)(1)-(19) if an individual is licensed or registered to engage in such a vocation, profession, business or occupation and has earnings that result from a vocation, profession, business or occupation in which such license or registration:

(A) Is required by federal, state, or local government, or by an employer;

(B) Pertains to knowledge or skills that substantially enhance the individual's performance of the vocation, profession, business or occupation; or

(C) Pertains to knowledge or skills that are generally regarded as significantly enhancing performance in a field that includes or is related to such vocation, profession, business or occupation.

(2) This subsection shall not limit the applicability of this tax to the privilege of engaging in any vocation, profession, business, or occupation listed

in Section 67-4-1702(a) that does not require licensure or registration other than in connection with payment of this tax.

SECTION 4. Tennessee Code Annotated, Section 67-4-1708, is amended by deleting that section in its entirety and by substituting instead the following language:

For purposes of the tax levied by this part, a taxpayer's tax year shall be the same as the taxpayer's taxable year for federal income tax purposes, and a taxpayer's method of accounting shall be the same as the taxpayer's method of accounting for federal income tax purposes. If no method of accounting has been regularly used by the taxpayer, annual net earnings shall be computed under such method that in the opinion of the commissioner of revenue fairly reflects earnings derived from the exercise in Tennessee of the privileges subject to this tax.

SECTION 5. Tennessee Code Annotated, Section 67-4-1709, is amended by deleting that section in its entirety and by substituting instead the following language:

(a) Each individual who has exercised any of the privileges subject to this tax shall file a Tennessee tax return with the commissioner of revenue on or before the fifteenth day of the fourth month following the close of the taxpayer's tax year, containing such information as the commissioner may reasonably require, and on forms prescribed by the commissioner.

(b) Without assessment, notice, or demand, the taxpayer shall pay any tax due to the commissioner on or before the due date of the return, without regard to any extension of time for filing the return.

SECTION 6. Tennessee Code Annotated, Title 67, Chapter 4, Part 17, is amended by adding the following new, appropriately designated section:

Section 67-4-1710. An extension of time of four (4) months in which to file any return, statement or other document due or required under this part will be granted, provided that on or before the original due date of the return, the taxpayer makes the

request and pays taxes equal to one hundred percent (100%) of the liability for the tax year for which the extension is being requested, and the extension request is made on a form prescribed by the department of revenue.

SECTION 7. Tennessee Code Annotated, Title 67, Chapter 4, Part 17, is amended by adding the following new, appropriately designated section:

Section 67-4-1711.

(a) Any return, declaration, statement or other document required to be made pursuant to this part shall be signed if required by, and then in accordance with, regulations adopted or instructions prescribed by the commissioner of revenue. The fact that an individual's name is signed to a return, declaration, statement or other document shall be prima facie evidence for all purposes that the return, declaration, statement or other document was actually signed by such individual.

(b) The making or filing of any return, declaration, statement or other document or copy thereof required to be made or filed pursuant to this part, shall constitute a certification by the person making or filing such return, declaration, statement or other document or copy thereof that the statements contained therein are true.

SECTION 8. Tennessee Code Annotated, Title 67, Chapter 4, Part 17, is amended by adding the following new, appropriately designated section:

Section 67-4-1712. Notwithstanding any provision of law to the contrary, a refund of the tax levied by this part shall not be made unless:

(1) The refund claim is filed within one (1) year from December 31 of the year in which payment was made; or

(2) If no refund claim has been filed but the commissioner of revenue is in possession of proper proof and facts that a refund is due, the commissioner makes the refund within one (1) year from December 31 of the year in which payment was made.

SECTION 9. Tennessee Code Annotated, Title 67, Chapter 4, is amended by adding the following new, appropriately designated part:

67-4-2201. The engaging in any vocation, profession, business or occupation hereinafter named in this part is declared to be a privilege taxable by the state alone. The privilege tax established in this part shall be collected by the commissioner of revenue and deposited to the state general fund.

67-4-2202. There is levied a tax on the privilege of engaging in an occupation licensed or registered under title 48, chapter 2 as an agent, broker-dealer, or investment advisor.

67-4-2203.

(a) The privilege tax established by this part is two hundred dollars (\$200) annually. The privilege tax is due and payable on June 1 of each year. Taxes paid after June 1 are delinquent.

(b) Any person who is licensed or registered for two (2) or more professions taxed pursuant to the provisions of this part shall not be required to pay more than one (1) tax in the amount of two hundred dollars (\$200).

67-4-2204. Penalties and interest shall be assessed and collected by the commissioner of revenue on delinquent taxes in accordance with the provisions of chapter 1 of this title. Failure to pay the privilege tax pursuant to the provisions of this part will result in a warning letter from the commissioner of revenue to the delinquent professional. A second nonpayment shall be grounds for suspension of any license or registration by the appropriate licensing board. A third or subsequent nonpayment shall be grounds for revocation of any license or registration by the appropriate licensing board. The commissioner of revenue is authorized to compile and transmit an annual list of delinquent professionals to the appropriate licensing board.

67-4-2205. The tax levied by this part shall not be construed to be a regulatory fee.

67-4-2206. The tax levied by this part is in addition to all other taxes and fees levied by law.

67-4-2207. The commissioner of revenue is authorized to promulgate rules and regulations in accordance with the provisions of the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, to implement, administer and enforce the provisions of this part.

67-4-2208. The privilege tax levied by this part upon the privilege of engaging in certain occupations requiring registration or a license do not apply to a person so registered or licensed, if the person is inactive or retired pursuant to the regulations of the appropriate licensing board.

SECTION 10. Any individual who exercises a privilege subject to the tax levied by title 67, chapter 4, part 17 and has earnings by which such tax is measured, after its effective date may bring suit for a declaratory judgment concerning the constitutionality and validity of such tax. Such suit may be brought only in the Chancery Court of Davidson County. The court shall expedite the hearing and determination of such suit to the extent possible, commensurate with the interests of justice. Any appeal of such suit shall be taken directly to the Supreme Court of Tennessee.

SECTION 11. Should the tax levied by title 67, chapter 4, part 17 as amended by this act be determined to be unconstitutional or invalid in its general application by the final decision of a court of competent jurisdiction, then the provisions of title 67, chapter 4, part 22 shall be repealed. The provisions of title 67, chapter 4, part 17, as they existed immediately before the effective date of this act, shall be revived in their entirety and shall immediately become effective as of the effective date of such final decision.



SECTION 12. All individuals subject to the tax levied by title 67, chapter 4, part 17 for the tax year beginning on or after January 1, 2002 shall be liable for such tax, and no credit shall be given for any payment made of the tax due on June 1, 2002 pursuant to the provisions of title 67, chapter 4, part 17 that were in effect prior to the effective date of this act.

SECTION 13. This act shall take effect on July 1, 2002, the public welfare requiring it. Sections 1-8 of this act shall apply to tax years beginning on or after January 1, 2002, the public welfare requiring it.